

Governor's Blue Ribbon Water Task Force

Draft Meeting Notes

April 26-27, 2006

Attendees: Larry Blair, Conci Bokum, Brian Burnett, Frank Chaves, Wayne Cunningham, John D'Antonio, Lisa Henne, Eileen Grevey-Hillson, David Hughes, Bill Hume, Howard Hutchinson, John Leeper, Elmer Lincoln, Paul Paryski, Elmer Salazar, and Jack Westman.

Updates from the Regions

Wayne Cunningham reported that Tucumcari will only have 6 inches of water this year, and there is no groundwater to fall back on. Wayne told Task Force members that Governor Richardson made a comment at a town hall meeting that next year would be the Year of Water. Wayne also mentioned that he attended the drought hearing with Senator Dominici, Senator Bingaman and Representative Wilson. Senator Dominici wants to get \$24M from the Water 2025 Challenge Grant program. Money for the Challenge Grant program will come from four programs under the Bureau of Reclamation, including Water Conservation and Indian Affairs, that are all receiving large funding cuts.

David Hughes reported that it has been very dry in the Raton area, and there have been several fires in the region. David also mentioned that there have been lawsuits filed over water rights being sold out of lake.

Elmer Lincoln reported that the Four Corners area is less impacted by the drought than the rest of the state. Navajo Lake is maintaining a consistent elevation and is holding a little more than 1.5M acre-feet. The decision tree requires that they engage in spring releases up to a high of 5000cfs or 120K acre-feet for a few weeks. Elmer also mentioned that the Department of the Interior has released an Environmental Impact Statement for long term operation of Navajo Lake, that Judge Sanchez continues to progress with the San Juan stream adjudication, and that shortage sharing agreements are in place.

Howard Hutchinson reported that snow pack is too low to use for predicting runoff, and river levels are also very low. Howard commented that there is more concern in his area about getting water to existing water rights than about getting additional water.

Conci Bokum reported that the City of Santa Fe and Santa Fe County are having difficulties with the agreement for the Buckman Direct Diversion. The two entities had a cost share agreement, but Santa Fe County ultimately could not afford to pay 50% of the fixed costs. Conci explained that the difficulties can affect the Environmental Impact Statement, which is dependent on collaboration and agreement between the two parties. Similarly, the request for proposals is for design-build, but discord between the City and the County will discourage the most reputable firms from submitting proposals.

Conci also mentioned that there is a bill in congress (HR1711) appropriating 5M for the Middle Rio Grand, 1.5 for the San Juan, and some money for the Gila.

Conci told Task Force members that she attended the last hearing on the proposed domestic wells regulations. Conci reported that the two provisions that were most controversial were the expedited transfer provision and its potential impact on due process and transparency, and the OSE position of not allowing transfers of domestic well water into community water systems. Conci pointed out that given the water quality and reliability concerns with domestic wells, it might make sense from a public policy and public health standpoint to allow the transfers. Conci reminded members that the Task Force has talked about working on mutual domestics, and this type of issue is very important to understand.

Elmer Salazar reported that the acequias are not running in the upland areas and it is not certain that they will be able to flow this year. In the lower elevation areas, the acequias have been running for about a month in most cases, and the acequia community is continuing to look at water rights issues. Due to the drought, ranchers are still on hold for grazing public land depending on which allotment they are on. Some can go in the first of May, but others will have to wait until June.

Larry Blair reported that the pipeline across the Rio Grande in Albuquerque is almost finished, and for the first time the east and west side of town will be connected. Larry added that there is a lot of construction going on associated with the planned construction of the diversion in 2008. The cost of constructing the diversion is estimated at \$365M. Larry commented that people in Albuquerque are going to need to be conditioned to the new taste, and that water will be blended. In response to a question about the impact of the diversion on base flow in the Rio Grande, Larry stated that the amount of water diverted will be almost unnoticeable because it is a small percentage of the instream flow. Return flow for Albuquerque is about 55,000 million gallons per day and is one of the largest "tributaries" to the Rio Grande in the state. Larry also reported that Albuquerque wants to inject surplus river water into the aquifer during the winter when demand is low, but the injection wells have not been drilled yet and there are questions about what standards have to be met. Conci commented that Rio Grande water is polluted and requires a lot of treatment, and that there is also a compatibility issue with the chemical composition of the two waters. Conci added that part of the problem is the variability in water quality, which makes it harder to treat. Larry responded that the treatment technologies exist and are being built in.

Larry also commented that security is a concern with the diversion project. With a dispersed system, the whole system could not be sabotaged very easily and it is easy to segregate a part of the system that has been contaminated. In contrast, a central plant is more vulnerable, and security precautions are more extraordinary because of that concern.

Jack Westman commented that the Albuquerque Bernalillo County Water Utility Authority has a very aggressive program to drop consumption. Jack added that the public school system and older properties find it hard to pay for conservation.

Paul Paryski reported that the Santa Fe reservoirs are at 60%, and the conservation ordinances he has been working on are moving ahead. The City of Santa Fe might ask for a voluntary contribution to a conservation fund on water bills. The new mayor wants to promote conservation, and is going to announce tomorrow that Santa Fe will have a green building program and a green building code. Jack Westman asked whether the city would be using the Leadership in Energy and Design (LEED) program. Paul responded that Santa Fe's program might be even more stringent than LEED. Jack commented that the LEED program is very difficult for builders because of the subjectivity of the reviewers.

Paul also reported that the City is going to have water harvesting and use permeable paving for some of its own buildings. The Railyard project is still on hold because of the issue of whether it can harvest water from parking lots and the landscape. The State Engineer said that the Railyard cannot do that, but a determination has not been made. Larry Blair commented that he was involved with data gathering for Albuquerque on the effects of urbanization on runoff. The data that he worked with showed that with undeveloped land, 1/3 of the water from a precipitation runs off. After urbanization, 2/3 of the water from an event runs off. The argument that the City of Albuquerque used with the State Engineer was that they should be able to use the runoff that is created from urbanization. The argument was not successful.

Bill Hume reported that an agreement was finally reached in the Abeyta suit, with a cost of \$130M. Bill added that over \$100M could be stripped without stopping the settlement. Bill also reported that there is a perception in D.C. that New Mexico is flush and should pay for the settlement, and there is disregard for the fact that settling water claims of Native American tribes is a federal trust responsibility.

John Leeper asked about how much obligation the state thinks it has for settlements. Bill answered that the state is responsible for 100% of the non-Indian part of settlements. John responded that the state will also benefit significantly from the project. Elmer Salazar added that the argument is that tribes are also New Mexico citizens, and therefore New Mexico should pay for its part of the Native American settlement portion. Bill responded that if one extends that logic, it leads to the question of how much other entities are entitled to.

Year of Water

Larry Blair commented that given Governor Richardson's statement about the Year of Water, the Task Force should look be pushing hard this year to help that happen. Conci responded that she had concerns about having a repeat of the situation in the last legislative session, where the governor declared the Year of the Child but a lot of important legislation in support of children did not get funded.

Jack Westman and Larry Blair both suggested that as a starting point, the Task Force would look back to its old reports and the governor's campaign speech in which he addressed water issues. Bill Hume stated that any analysis or advice that the Task Force can give the governor would be considered. Conci commented that given how the legislature is working, it will require more than a list of recommendations or findings for the governor. Howard Hutchinson added that Task Force members could be going back to their respective constituencies to push for support for HJR6 and to get local buy-in for water projects. Brian agreed that Task Force members individually can do more things than we can do as a group. Conci commented that Mark Edwards did an outstanding job of getting support for the Water Trust Fund capitalization, but what happened in the legislature was well short of what was expected. She added that it will take something more to make a difference in the next legislative session. Howard agreed with Conci, and added that there has to be some kind of leadership that helps local governments realign their priorities to emphasize water. Howard Hutchinson commented that it will be important to show the people in the state who will not directly benefit from a particular project that their turn will also come. Howard added that there has to be a building of confidence with communities and an awareness that not everyone can get everything at the same time. David Hughes commented that the long term approach is difficult for short term legislators who need to take something home to their communities.

Brian Burnett commented that if the Task Force could get confirmation from the governor that 2007 is going to be The Year of Water, that could be the Task Force's primary topic for the rest of the year. Conci Bokum added that the Task Force would also need to know what the top priorities are for water funding so that everyone is working from the same list. John D'Antonio commented that the Ute pipeline group would like to give a presentation to the Task Force, and it might be possible to have representatives of other water projects come and give presentations so that the Task Force can help identify the priority projects. Brian suggested that with an early start, the OSE, ISC and Task Force could be working together to leverage collective and group resources and make a campaign for the Year of Water.

John D'Antonio mentioned that all of the cabinet secretaries were asked to provide a list of what their proposals would be early in the year. For the OSE, the first priority is the referendum on the water trust fund. Other priorities are getting a multi year plan for major water infrastructure, the omnibus bill, completing the Pecos settlement, MRGCD, Gila, Ute pipeline, acequia and dam safety, implementation of the state water plan, and water master funding for AWRM. John added that the water master system is applicable throughout the western US and could provide a model management tool for addressing climate change. John stated that it will be very important to be able to manage under all kinds of scenarios, and that funding for climate change should emphasize setting up systems that allow us to deal with whatever comes.

Presentation on ISC planning efforts on the Gila

Craig Roepke, Danielle Smith, and Peter Wilkinson gave a presentation on the Upper Gila River settlement decision process through the Gila-San Francisco Coordinating

Committee. The information that was included in the presentation is available at <http://www.ose.state.nm.us/PDF/ISC/BasinsPrograms/GilaSanFrancisco/BriefingPacket-4-24-2006.pdf>.

Additional information about the Gila-San Francisco Coordinating Committee can be found at http://www.ose.state.nm.us/isc_colorado_gila_sanfran_committee.html.

Update on Navajo Nation Water Rights Settlement

Karin Stangl told Task Force members that the OSE/ISC completed a first cut of video and aired it for the economic forum. Karen added that after staff and Navajo council members watched the first cut, they decided that the video needed more human interest. In pursuit of that, an additional interview was taped and a crew is going back to the Navajo Nation to shoot more footage. Jack Westman asked Karin what the video will be used for. Karen responded that it will be used as a marketing tool, to show to legislators, and for education. Jack commented that the video went over very well at the economic forum and suggested that it be distributed state wide to chambers of commerce, etc. John D'Antonio replied that the agency is doing that, and is also working on a longer version with KNME to air. Karin commented that KNME was initially resistant to showing the video, but now they want to do a showing on "In Focus". KNME will provide \$30K, and the OSE has to come up with \$30K. The Navajo Nation has already committed \$15K. John added that the OSE/ISC is also trying to start up a speakers bureau to back up agency staff, and the video could be part of the process.

John D'Antonio informed the group that he would be traveling to D.C. in mid May to talk about Indian water rights settlements with congressional staff and Department of Interior staff. John added that he is concerned about the level of federal participation in these settlements because it is of no use to have settlements in place that do not get funded in a reasonable amount of time. The federal government has a trust responsibility but does not see any incentives for funding settlements. New Mexico has very little information about what other settlements are in need of funding.

Howard Hutchinson commented that there is a rule that for every new funding authorization, something has to be cut to compensate for it. Howard added that a large amount of money at one time poses difficulties for anyone on a committee trying to figure out where the offset would come from. Howard asked whether there has been any effort to break down the cost into annual amounts so that sufficient revenue flow to bond against could be created and the projects completed. Right now one of the movements in congress is to stop buying land for the federal government to manage, and redirect funding to other things. Funding the settlement could be something that would generate a revenue stream for the government rather than being a draw.

Jack Westman commented that there needs to be a greater sense of awareness and urgency among Santa Fe, Albuquerque, and other San Juan Chama water users about what happens if we don't get the settlement done and the Navajo put in a claim for their water. John Leeper commented that he thought the Navajo deadline is within a year.

Jack added that it is one thing to show a video that depicts the hardships that the Navajo people go through, but to really motivate the people in New Mexico, we have to show people what the consequences are. Bill Hume commented that Senator Dominici has done an analysis that showed that the impact of no settlement would be less than the cost of the settlement by a factor of 10. Jack responded that uncertainty has a huge impact and that has not been captured in that study. For example, 80% of power generation in new Mexico is in the Four Corners area.

OSE Updates

John D'Antonio told Task Force members that the OSE fulfilled all of the public process requirements for the proposed domestic wells rules and regulations and held seven public meetings in addition to that. John commented that he attended all but two meetings and there was very little animosity. The hearing was on April 21, but John did not attend. The hearing examiner listens to testimony, and all of the comments to date were made available so that the hearing officer could take them into consideration. The OSE is now waiting to hear from the hearing officer. OSE staff will put together a second draft based on public comments, which will be followed by another 2 1/2 weeks of comments, the recommendation from the hearing officer. The final draft should be released in June.

John stated that acequias and mutual domestics expressed concern about the non-transferability of domestic wells. John explained that domestic well water rights are not really water rights, but rather a permit to use water in situ. Transfers to mutual domestics have allowed mutual domestics to increase their water rights, and there was nothing to stop people from drilling domestic wells and then transferring the water into a mutual domestic. Acequia bylaws can already impede transfers out of acequias, although this has not been challenged yet. John added that the acequias are also concerned that public protection will be violated with expedited transfers. John stated that the expedited transfer provisions are intended to allow people to transfer water rights to their children when land is subdivided for families. These regulations would allow the OSE to close the books with these small transfers and close the loophole for transfers into mutual domestics. John also stated that as it stands now, there is an unlimited expedited process for domestic wells.

Frank Chaves commented that there might be a good intent by this administration, but that could change, and by granting this authority, the state engineer under a different legislation might use the regulations differently. John responded that he heard that there was legislation coming to transfer domestic well water rights to mutual domestics, and these regulations are pre-emptive of that. The state engineer has always had jurisdiction over domestic wells, but others think that the OSE does not have the authority to deny domestic well permits. John added that the appropriation of unappropriable water is a problem.

Eileen Chaves asked John how he would create a soft landing for mutual domestics. John replied that every area has a different situation and the formula will vary accordingly. For example, in the Española area, the mutual domestics do not have enough water rights,

but could maybe lease from the Santa Cruz Irrigation District. John added that he does not allow leasing of water rights for permanent developments, but will allow short term leases while mutual domestics find more permanent water rights. Eileen Grevey-Hillson asked John if it creates a problem to work on a case-by-case basis. John replied that it really does not, and in order to create a soft landing the OSE needs the flexibility to work with each situation individually.

Brian Burnett asked what the home developers thought of the draft regulations. John replied that they were generally in favor but had some questions about the limit of five permits at a time.

In response to a request for clarification on the regulations, John explained that if someone within a domestic well management area wants to put in a well and use more than one acre-foot of water, he or she can transfer in a surface water right for a total of up to 3 acre-feet. This transfer allows for the offsets for increased groundwater use in a stream connected aquifer.

Brian Burnett commented that when domestic well management was attempted through legislation, opposers forced it to go outside of the legislative route when it could have worked as well or better legislatively than what is being done now. Brian added that opposers propagated the perception that the rules would impact existing wells, and in debates, there was a disconnect between the different positions that were taken. John responded that one of the good things about the hearing process is that it gave the OSE the opportunity to address misconceptions immediately.

Water Innovation Project Fund

John D'Antonio told Task Force members that he was contacted by Roger Patrick, who has had a couple of projects financed through the fund and is willing to come and talk to the Task Force.

Task Force members discussed various options for reviewing projects. Suggested definitions for “innovative” included the development of new technologies or a new use of existing technologies. The criteria that were suggested for measuring project success included water savings, water quality benefits, whether the project met predicted outcomes or expectations, cost effectiveness, and reproducibility.

Task Force members also discussed various methodologies that could be used for identifying projects for further study. The members agreed that a simple voting system would be the most appropriate given the diverse makeup of the Task Force and the limited information available on project outcomes. Brian Burnett suggested using a voting system that his company uses for evaluating options for various project. Task Force members agreed on this approach. Lisa Henne offered to compile additional information about the projects, and voting will take place during the May meeting.